

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO


THE ESTATE OF JOSÉ ANTONIO TORRES
MARTINO, represented by RAÚL CINTRÓN
RODRÍGUEZ

Plaintiffs

vs.

FOUNTAIN CHRISTIAN BILINGUAL SCHOOL
CAROLINA, INC.; FOUNTAIN CHRISTIAN
BILINGUAL SCHOOL, INC.; OMayRA
GUTIERREZ; OTONIEL FONT NADAL; THE
CONJUGAL PARTNERSHIP BETWEEN
OTONIEL FONT NADAL AND OMayRA
GUTIERREZ; FREDDY ABDUL SANTIAGO;
JANE DOE; THE CONJUGAL PARTNERSHIP
BETWEEN FREDDY ABDUL SANTIAGO AND
JANE DOE; AND INSURANCE COMPANIES A
AND B; CORPORATIONS A, B, AND C; JOHN
DOE AND OTHER UNNAMED DEFENDANTS.

Defendants

RECEIPT #	18-0056938
AMOUNT:	\$ 400.00
JUL 23 2018	
	
CASHIER'S SIGNATURE	

CIVIL NO. 18-CV-1509(PAD)

PLAINTIFFS DEMAND
TRIAL BY JURY

COPYRIGHT INFRINGEMENT
VISUAL ARTISTS RIGHTS
ACT (VARA); DAMAGES

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COMPLAINT

TO THE HONORABLE COURT:

COME NOW, the Plaintiffs, represented by the undersigned attorneys and respectfully
state, allege and pray as follows:

I. JURISDICTION AND VENUE

1.1 This Honorable Court has jurisdiction over this copyright infringement action
pursuant to the Visual Artists Rights Act ("VARA"), 17 U.S.C. § 106A, et seq., and the
Copyright Act of the United States, 17 U.S.C. § 101, et seq.

1.2 This Honorable Court has subject matter jurisdiction over this copyright
infringement action pursuant to 28 U.S.C. § 1331 and 1338(a).

1.3 This Honorable Court also has supplemental jurisdiction over Plaintiffs' claim arising under Article II Section 1 and 8 of the Constitution of Puerto Rico, under state law through Act No. 55 of 2012, Moral Rights of Puerto Rico, 31 L.P.R.A. §141i-141ff, and Article 1802 of the Civil Code of Puerto Rico, 31 L.P.R.A. §5141 as those claims form part of the same case or controversy.

1.4 Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and (c), and/or § 1400(a).

II. THE PARTIES

2.1 Plaintiffs, José Martín Torres, Jackeline Torres, Michelle Torres, and Corinne Cobb, members of the Estate of José Antonio Torres Martino (hereinafter "Torres Martino", are the legal and/or beneficial owners of any copyright interest and right as to the specific work of art in controversy, among others. They are duly represented in the present case by their legal representative, Raúl Cintrón Rodríguez. Said legal representative was chosen by Torres Martino as the executor of his living will.

2.2 Mr. Raúl Cintrón Rodríguez is the legal tutor of José Martín Torres, pursuant to a Court Judgment.

2.3 Defendant, Fountain Christian Bilingual School Carolina, Inc. (FCBSC from here forth), is a corporation organized and existing under the laws of the Commonwealth of Puerto Rico, with its principal place of business in Carolina, Puerto Rico. This corporation does business in this judicial district and by information and belief, manages, administers and operates the Fountain Christian Bilingual School in Carolina, Puerto Rico.

2.4 Defendant, Fountain Christian Bilingual School, Inc. (FCBS from here forth), is a is a corporation organized and existing under the laws of the Commonwealth of Puerto Rico, with its principal place of business in Vega Baja, Puerto Rico. By information and belief, FCBS is the parent company of FCBSC.

2.5 Defendant, Omayra Gutierrez, by information and belief, is the President and Treasurer of the Fountain Christian Bilingual School Carolina, Inc.

2.6 Defendant, Otoniel Font Nadal, by information and belief, is the Secretary of the Fountain Christian Bilingual School Carolina, Inc.

2.7 Defendants, Omayra Gutierrez and Otoniel Font Nadal are residents of Puerto Rico and their conjugal partnership was organized under the laws of Puerto Rico.

2.8 Defendant, Freddy Abdul Santiago, by information and belief, is a representative of the Fountain Christian Bilingual School Carolina, Inc. Freddy Abdul Santiago and his wife, whose real name is presently unknown by the Plaintiffs and is identified with the fictitious name of "Jane Doe", are both residents of Puerto Rico and their conjugal partnership, if any, is organized under the laws of Puerto Rico.

2.9 Defendants, Insurance Companies "A" and "B" are legal entities whose identities are presently unknown by the plaintiffs and were organized under the laws of Puerto Rico or under the laws of any state other than Florida, Pennsylvania or Georgia, with their main offices located in Puerto Rico and were authorized by the Puerto Rico Insurance Commissioner to issue insurance policies. At the time of the occurrence of the acts and/or omissions alleged herein-below, Insurance Companies A and B had issued insurance policies to provide coverage to any of Defendants for claims as those presented

in this case. Insurance Companies A and B are jointly or severally liable together with their insured clients for any fault and/or negligence their insured may have incurred and for any liability that may be found, that resulted in causing the damages being claimed by the Plaintiffs in this action.

2.10 Defendants, Corporations “A,” “B,” and “C” are the owners and/or operate FCBSC and FCBS, whose name will be substituted pursuant to discovery, and are jointly liable for the damages claimed in the instant complaint.

2.11 Defendants, John Doe and other unnamed defendants, are jointly liable for the damages claimed in the instant complaint and whose names will be substituted pursuant to discovery.

III. FACTUAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

3.1 Torres Martino, was a Puerto Rican artist, painter, journalist, writer, TV and radio personality, and professor. As an artist, he was very well-known in Puerto Rico, the United States, and other countries.

3.2 Torres Martino was born in Ponce, Puerto Rico on November 17, 1916 and passed away on April 22, 2011. In 1946 he studied painting with Rufino Tamayo in the Brooklyn Museum School of Art and mural painting with Camilo Egas at the New School of Social Research in New York. In the summer of 1947, he furthered his studies of mural painting at the Academy of Fine Arts of Florence, Italy. He was one of the founders of the *Centro de Arte Puertorriqueño (CAP)* in 1950, as well as the *Asociación Puertorriqueña de Artistas y Técnicos del Espectáculo (APATE)*, and the *Hermandad de Artistas Gráficos de Puerto Rico (HAGPR)*.

3.3 In 1949 he won a contest for a large-scale mural for the Club Carrión of the Caribe Hilton Hotel. Alice Loewenheim, art critic for the New York Times; architect Henry Klumb; writer, Tomás Blanco; and art historian, Sebastián González García; were the members of the jury of said contest.

3.4 As part of his trajectory, during the decade of 1960, Torres Martino created several renowned works of art, including several murals that were painted as part of an initiative with the government of the Commonwealth of Puerto Rico to decorate several public buildings.

3.5 The artist executed a contract with the *Instituto de Cultura Puertorriqueña* (ICP from here forth), in which he agreed to receive compensation for creating a mural on one of the interior walls of a building that at that time served as a school for the Department of Education of the Commonwealth of Puerto Rico (*Escuela Julia de Burgos*). The mural was titled “Río Grande de Loíza” and was painted in the year 1966.

3.6 The *Escuela Julia de Burgos* building, located in Urb. Los Ángeles, Carolina, Puerto Rico, is owned by the Puerto Rico Department of Transportation and Public Works (DTOP from here forth). See **Exhibit 1 Mural Prior to the Actions of the Defendants**.

3.7 The mural “Río Grande de Loíza” measures 8’2”x 23’. As part of the creation process, Torres Martino had to create sketches or versions of the mural before presenting the final version to the ICP for approval. Torres Martino worked through the summer months in order to finish the mural in time for the beginning of the school year, in order to surprise the students and school community. See **Exhibit 2 Sketch of the**

Mural.

3.8 The mural included an excerpt of a poem written by the Puerto Rican renowned poet, Julia de Burgos. Said mural not only had artistic significance, but as part of the school building, also had cultural and educational significance for every student who would graduate from said school as the years passed by.

3.9 The mural "Río Grande de Loíza" was renowned not only within the artistic community in Puerto Rico, but also throughout the country. It was prominently featured in several books, including Rafael Ríos Rey: el Muralismo en Puerto Rico, which was written by Nestor Murray Irizarry in 2005; and José Antonio Torres Martino: Voz de Varios Registros, which was written by Prof. Margarita Fernández Zavala. It was cared for and looked after by many, including teachers and students who attended said school, and other members of the community. The mural was accessible for all who visited the school building to view and admire it up until July 2017, when the school was closed.

3.10 Torres Martino, as the author of the mural in controversy, owned the rights and title to its copyright. After his death, his Estate became the owners of said rights and title.

3.11 On April 2, 2018, the DTOP executed a contract with the Defendants by which they leased the *Escuela Julia de Burgos* building, where the mural object of the present complaint is located at, to the FCBSC for the monthly payment of one dollar (\$1.00), pursuant to the Executive Order No. OE-1027-32. Defendant Freddy Abdul Santiago appeared on behalf of FCBSC for the execution of the contract, which was then registered in the Comptroller's Office on April 10, 2018.

3.12 On April 10, 2018, Plaintiffs learned that the school building was being administered by FCBSC.

3.13 Upon information and belief, the FCBSC had control of the building since December of 2017, and their school enrolled students and began offering classes beginning on January of 2018; both of which took place ample time before the lease contract was executed.

3.14 Upon information and belief, Defendant Omayra Gutierrez, as Executive Director of the school, as well as President and Treasurer of FCBSC, decided to paint over the mural "Río Grande de Loíza." The Estate or its legal representatives were not notified nor asked for authorization as to Plaintiffs painting over the mural. See **Exhibit 3 Mural After Defendants' Actions.**

3.15 On April 12, 2018, Plaintiffs learned that the mural "Río Grande de Loíza" had been painted over completely with a light gray paint, therefore mutilating and destroying it to the point where at the present moment it is unknown if it can be restored to its original state.

3.16 Upon knowing this, the Plaintiffs, through Professor and Art Historian Margarita Fernández Zavala, author of the book titled José Antonio Torres Martino: Voz de Varios Registros, and an expert on the work of the artist, began to request access to the mural from the Defendants. The purpose for this was to have recognized artwork restoration experts examine the mural in order to evaluate if it was possible to: (i) restore the mural to its original condition; (ii) see which technique would be the most appropriate for its restoration; and, (iii) estimate the possible cost of doing so. Through Prof.

Fernández Zavala, Plaintiffs also demanded that the harm caused to the mural be remedied, and warned that if nothing were to be done, they would have no other choice but to exercise their legal rights in order to protect Torres Martino's name, honor and reputation.

3.17 Despite the availability of Plaintiffs' legal representatives to evaluate the mural and their multiple offers to accommodate to the Defendants' schedule for their convenience, they were never offered the opportunity to access the mural. Instead, Defendants merely informed them that the matter was being handled by the ICP.

3.18 On April 18, 2018, Carlos R. Ruiz Cortés, the Executive Director of the ICP sent a letter to Mrs. Omayra Gutierrez, the Executive Director of the FCBSC, in which he explained that they knew that the mural had been painted over, and that the ICP was denied access to it. He then proceeded to provide the FCBSC with fifteen (15) days to comply with their order to access the mural to have it examined by a qualified professional in art conservation to determine if it was possible to restore the mural. In doing so, they provided a list of qualified professionals in art conservation.

3.19 Neither Mrs. Omayra Gutierrez nor any other representative of the FCBSC formally answered the letter sent by the ICP.

3.20 Raúl Cintrón Rodríguez spoke with Defendant Freddy Abdul Santiago to try to gain access to the mural and be able to discuss the matter. However, Abdul Santiago continually denied access to the Plaintiffs' representatives, and did not provide any other information other than the little that was already known.

3.21 On May 18th, 2018, Plaintiffs hand delivered a letter to the Defendants

through Freddy Abdul; and on May 21st to Defendants through Omayra Gutierrez. Said letter requested access to the mural and that Defendants stop any intervention with the mural until it could be examined by Plaintiffs and conservators acceptable to them. Nonetheless, FCBSC's representatives continued to ignore the Plaintiffs' requests. On May 18th, 2018, the same letter was hand delivered to the Director to the ICP and on May 21st, 2018, it was delivered to the Secretary of the DTOP.

3.22 Mr. Raúl Cintrón had notified on several occasions to Abdul Santiago that he would visit the school on May 22nd, 2018, as requested in his May 18th, 2018 letter. On May 22nd, 2018, at 5:00 p.m., Raúl Cintrón and Prof. Fernández Zavala, visited the school in an attempt to enter and see the mural, and were not allowed to do so by Abdul Santiago, who indicated that the matter was being managed by the ICP. This meeting occurred at the sidewalk on the other side of the second entrance (delivery entrance) to the school.

3.23 On May 23rd, 2018, Raúl Cintrón Rodríguez and others held a meeting with the Executive Director of the ICP. This meeting was obtained by efforts of Hon. Denis Marques, member of the House of Representatives for the Commonwealth of Puerto Rico, who had taken notice of the need to protect the mural of Torres Martino as early as April 11, 2018. During said meeting, the Executive Director of the ICP informed the Plaintiffs that on several occasions and on May 21, 2018, he had spoken over the phone with a representative of the Director's Office at the FCBSC, and he had been informed that FCBSC: (i) had taken action to protect the mural; and (ii); had hired a restorer to undertake the restoration process of the mural. The Director of the ICP also informed that he did not take any further action after he had submitted the letter of April 18th, 2018 and

had been denied access to the school; and also, that he had not been informed the name of the conservator working on the mural and his qualifications other than he had been selected from the list provided by the ICP.

3.24 In addition, the Executive Director of the ICP told Plaintiffs' legal representatives that the mural and the school building were not under their control, but rather under the control of the FCBSC and the DTOP, and that the ICP's hands were tied.

3.25 On June 11, 2018, Plaintiffs' legal representatives sent a letter to Eng. Carlos Contreras Aponte ("Contreras Aponte"), Secretary of DTOP, reiterating their demands from their letter of May 18, 2018, detailing further efforts made to gain access to the mural, and formally requesting a meeting to discuss the matter.

3.26 On June 13, 2018, Plaintiffs' legal representatives and others met with Contreras Aponte. This meeting was also obtained by efforts made by Hon. Denis Marques. During said meeting, Plaintiffs' legal representatives reiterated their requests from the letters of May 18, 2018, and June 11, 2018, which had not been answered by Contreras Aponte. They also requested that Contreras Aponte instruct Defendants to give Plaintiffs and their experts access to the mural in order to evaluate the damage done to the visual work of art and any rescue efforts that may have been carried out. Nothing was gained by this meeting, and to this date, Contreras Aponte has not answered the aforementioned letters.

3.27 After countless good faith efforts on part of the Plaintiffs to access the mural, Plaintiffs' legal representative had no recourse left but to file a complaint with the Puerto Rico Police Department. On June 19th, 2018, the Police Department executed a warrant

on FCBS to ascertain the state of the mural. The Police were accompanied by the following people: (i) Prof. Margarita Fernández Zavala, as an expert on Torres Martino's work; (ii) Ms. Lidia Aravena-Carrillo, Director of the Conservation Laboratory at the *Museo de Arte de Ponce*; (iii) Mr. Ángel Santiago-Torres, expert in art conservation of the *Museo de Arte de Ponce*; and, (iv) Ms. Sol Elena Rivera, expert in restoration of art from the *Museo de Arte de Puerto Rico*. During said visit the art experts verified that the mural had indeed been damaged and was being "rescued" or "restored" in an amateurish fashion which is not consistent in the least bit with the efforts of a professional art expert. **See Exhibit 4 Alleged Restoration Attempt.**

3.28 Although the Defendants' representatives have publicly expressed that they have undertaken the recovery process of the mural, they have not identified the alleged professional who is performing the alleged recovery, or his professional qualifications for said undertaking. The professionals who carry out conservation-restoration processes of wall paintings are experts specialized in the field of heritage preservation, who should be professionally educated and trained, as recommended by associations such as the European Network for Conservation-Restoration Education (ENCORE), the European Confederation of Conservator-Restorers' Organizations (ECCO), and by the Code of Ethics of the International Council of Museums-Committee of Conservation.

3.29 By not knowing who the person in charge of recovering the mural is, and if said person is in fact qualified to do so, Plaintiffs remain in a continuous state of uncertainty and apprehension. The Defendants' bad-faith is evidenced in their unwillingness to provide Plaintiffs with information regarding the mural. This behavior on

part of the Defendants is completely unreasonable and places the rightful copyright owners at a noticeable and unfair disadvantage.

3.30 In addition, Defendants' expressions have been limited to the use of the terms "rescue" and "recovery" of the mural, carefully avoiding the use of the term "restoration". This fact is worrisome for the Plaintiffs, since the Defendants have not indicated in a clear manner what process is being undertaken. The findings of the art experts who accompanied the Police have further confirmed Plaintiffs' fears. As such the "recovery" or "rescue" process being undertaken by Defendants is not an appropriate one and is causing even more irreparable harm than that which has already been caused.

3.31 Plaintiffs were never notified of Defendants' intent to paint over the mural. Therefore, Defendants did not have the consent, authorization, permission, license or ownership of the infringed artwork in order to paint over it and/or mutilate, destroy or change it in any way or for any purpose. By doing so, Defendants acted illegally, in violation of both state and federal laws.

3.32 The mutilation, distortion, and/or destruction of the mural caused by the Defendants' actions, has caused irreparable damage to the Plaintiffs. Furthermore, the possibility that the damage may not be reversed has caused further mental pain and anguish to the Plaintiffs.

3.33 The moral rights of integrity and attribution of the author's Estate have been violated, since they have the sole and exclusive rights to authorize or execute any type of distortion, destruction, and/or mutilation of Torres Martino's artwork, in a manner that could damage his reputation or honor; likewise, the heirs have the sole right to prevent

any willful and intentional distortion, destruction, and/or mutilation of Torres Martino's artwork, in a manner that could damage his reputation or honor.

3.34 Likewise, the moral right of access of the author's Estate has been violated, since they have not been granted access to the mural "Río Grande de Loíza" under any circumstances, despite their good faith efforts to reach a mutual agreement with the Defendants.

3.35 Even though the mural "Río Grande de Loíza" was never registered in the Intellectual Property Registry ascribed to the State Department of Puerto Rico or the U.S. Copyright Registry, the moral rights inherited by Plaintiffs exist even if the work of art was never registered.

3.36 Plaintiffs, being the rightful heirs of Torres Martino, are entitled to compensation for the damages caused by the violation of the moral rights of the author.

3.37 Plaintiffs are further entitled to injunctive relief and redress for Defendant's willful, intentional and purposeful mutilation and/or destruction of the infringed artwork, in complete disregard of Plaintiffs' rights.

3.38 The cost of restoration and/or removal of Torres Martino's work of art is estimated at an amount of no less than \$100,000.00.

**IV. FIRST CAUSE OF ACTION
VISUAL ARTISTS RIGHTS ACT (VARA)
(17U.S.C. §106A)**

4.1 The allegations in all preceding paragraphs are re-alleged as if fully incorporated herein.

4.2 José Antonio Torres Martino was the sole owner of the copyright of an

original work that is fixed in tangible media of expression. After his passing, the Estate of Torres Martino became the sole owners.

4.3 Torres Martino's mural is a "work of visual art" within the meaning of 17 U.S.C. § 101, and therefore constitutes copyrightable subject matter.

4.4 Torres Martino's mural is a work of visual art of recognized stature.

4.5 Torres Martino's mural has received wide public acclaim and approval since its creation more than five (5) decades ago.

4.6 The Defendants destroyed the original mural "Río Grande de Loíza" without Plaintiffs' consent or authorization.

4.7 Torres Martino's honor and reputation as an artist has been damaged by the Defendants' actions.

4.8 The Estate of Torres Martino was irreparably harmed by the unauthorized mutilation and destruction of the mural in controversy.

4.9 Any intentional distortion, mutilation, modification or destruction of Torres Martino's mural is prejudicial to his honor and reputation.

4.10 Neither Torres Martino nor his Estate have signed or executed a written agreement that indicates that the installation of the mural at the building in controversy may subject the work of visual art to its destruction, distortion, mutilation or other modification.

4.11 Defendants' acts violated Plaintiffs' exclusive rights under VARA, including the right to integrity, which permits the prevention of the alteration, distortion, destruction of mutilation of a work of art.

4.12 Defendants' acts constitute a willful infringement, by which they knowingly and intentionally destroyed Torres Martino's work of art.

4.13 Although "Río Grande de Loíza" was never registered in the U.S. Copyright Office, said mural has protection pursuant to 17 U.S.C. § 412, which states that registration is required for any action brought for a violation of rights of author, except those brought under section 106A(a).

4.14 Along that same line, although the mural "Río Grande de Loíza" was never registered, it contains Torres Martino's signature on its lower left side ("Torres Martino 66"), and his ownership of the work of art is undisputed. It is common knowledge that said mural was created by Torres Martino, as recognized by the artistic community and the general public. Torres Martino writes about this mural in page 136 of his memoir published in the book written by Prof. Margarita Fernández Zavala's, Voz de Varios Registros, UPR (2006).

4.15 Pursuant to 17 U.S.C. § 106A(d)(2), Plaintiffs have the right to prevent such destruction, distortion, mutilation or modification of Torres Martino's works of visual art for a term consisting of the author's life and seventy (70) years after his death.

4.16 Defendants' infringement has caused and will continue causing irreparable harm to Torres Martino's reputation and therefore the Plaintiffs as well. As such the Plaintiffs urge this Honorable Court to order the Defendants to cease and desist from continuing to damage Torres Martino's mural. Otherwise, his work of art "Río Grande de Loíza" will be completely and utterly lost.

4.17 Accordingly, Plaintiffs are entitled to injunctive relief to restrain and enjoin

Defendant's continuous damaging conduct with an order for the immediate cessation of any restoration or "rescuing" efforts being carried out on behalf of the Defendants to remediate the destruction and/or damage already inflicted upon the mural.

4.18 Defendants' acts of infringement are completely intentional and willful, with the sole purpose of destroying Torres Martino's work of art. This was done with complete disregard of Plaintiffs' rights and the mural's protection under law.

4.19 Plaintiffs are entitled to their actual and punitive damages, and any other relief as permitted by the Copyright Act. The damages caused by the violation of the economic and moral rights of the Estate of Torres Martino for the destruction and mutilation of "Río Grande de Loíza" compensatory damages are valued at no less than \$300,000.00 and punitive damages are valued at no less than \$100,000.00.

4.20 Plaintiffs are entitled to attorneys' fees and costs pursuant to 17 U.S.C. § 505.

V. SECOND CAUSE OF ACTION
ACT NO. 55 OF 2012, MORAL RIGHTS ACT OF PUERTO RICO
(31.P.R.A. §1401i-1401ff, et seq.)

5.1 The allegations in all preceding paragraphs are re-alleged as if fully incorporated herein.

5.2 Act No. 55 of 2012, the *Moral Rights Act of Puerto Rico*, prohibits the violation of an author's moral rights over a protected work. Said Act establishes the importance of accessibility to work of arts not only for artists, but for the public in general.

5.3 Although the mural "Río Grande de Loíza" was never registered, it contains Torres Martino's signature on the lower left side, and his ownership of the work of art is

undisputed. It is common knowledge that said mural was created by Torres Martino, as recognized by the artistic community and the general public. Furthermore, pursuant to Puerto Rico law and jurisprudence registration is not a requisite for protection under Act 55 of 2012.

5.4 As members of the Estate of Torres Martino, Plaintiffs have the exclusive right of integrity over the mural “Río Grande de Loíza”, therefore excluding Defendants from being able to modify, distort, destroy or mutilate in any way, shape or form, said work of art without their authorization.

5.5 Defendants willfully painted over the mural “Río Grande de Loíza”, therefore mutilating and destroying it to the point where it is unknown if the mural can be restored to its original condition.

5.6 Plaintiffs have the right to prevent any willful or negligent destruction of the original artwork done by Torres Martino.

5.7 Plaintiffs were never notified of Defendants’ intent to paint over the mural. Defendants did not have the consent, authorization, permission, license or ownership of the infringed artwork in order to paint over it and/or mutilate, destroy or change it in any way or for any purpose.

5.8 Pursuant to Act No. 55 of 2012, Plaintiffs have the right to prevent such destruction, distortion, mutilation or modification of Torres Martino’s works of visual art for the duration of the author’s life and seventy (70) years after his death.

5.9 Defendants’ actions have caused and will continue causing irreparable harm to Torres Martino’s reputation and therefore the Plaintiffs. Plaintiffs urge this

Honorable Court order Defendants to cease and desist from continuing to infringe upon Torres Martino's mural. Otherwise, his work of art "Río Grande de Loíza" will remain lost.

5.10 Accordingly, Plaintiffs are entitled to injunctive relief to restrain and enjoin Defendants' continuing infringing conduct with an order for the immediate cessation of any restoration or "rescuing" efforts being made on behalf of Defendants to make up for the destruction already inflicted upon the mural.

5.11 Plaintiffs have the right to prevent any type of mutilation, distortion or destruction of Torres Martino's mural "Río Grande de Loíza" in order to prevent any damage to his honor and reputation as an artist, and to the artistic legacy he has left behind.

5.12 In addition, Plaintiffs have the exclusive right of access over the mural "Río Grande de Loíza", therefore being able to demand access to the original work of art when such is in the hands of a third party, in this case, Defendants.

5.13 Defendants have not permitted access to the mural "Río Grande de Loíza", under any circumstances and despite Plaintiffs best good faith efforts to reach a common agreement, therefore violating their right to access the work of art.

5.14 Plaintiffs are entitled to their actual and punitive damages, and any other relief as permitted by Act No. 55 of 2012. The damages caused by the violation of the economic and moral rights of the Estate of Torres Martino for the destruction and mutilation of "Río Grande de Loíza" compensatory damages are valued at no less than \$300,000.00.

5.15 Plaintiffs are also entitled to attorneys' fees and costs as permitted by Act

No. 55 of 2012.

**VI. THIRD CAUSE OF ACTION
(Violations under Commonwealth Constitution)**

6.1 The allegations in all preceding paragraphs are re-alleged as if fully incorporated herein.

6.2 Article II Section 1 of the Constitution of Puerto Rico declares that “[t]he dignity of the human being is inviolable,” while Section 8 of the Constitution of Puerto Rico states that “[e]very person has the right to the protection of law against abusive attacks on his honor, reputation and private or family life.”

6.3 The facts set forth in this complaint constitute violations of plaintiffs’ rights by defendants under the Constitution of the Commonwealth of Puerto Rico, Article II, Section 8 and the Civil Code of Puerto Rico of 1930, Article 1802, 31 LPRA § 5141. Supplemental jurisdiction over all claims arising under the Constitution and Laws of the Commonwealth of Puerto Rico arise from the same nucleus of operative facts, 28 USC §1367.

6.4 The facts alleged in this complaint state a claim under the Constitution of the Commonwealth of Puerto Rico and Article 1802, 31 LPRA § 5141, for which defendants are liable.

6.5 As a direct result of the unlawful and negligent actions carried out by Defendants, Plaintiffs’ rights under Article 1802 of the Puerto Rico Civil Code were violated. All defendants are severally and jointly liable for their actions. In order to dispel impunity and serve as deterrent, punitive damages should be imposed in an amount not less than \$300,000.00 against the defendants.

VII. DEMAND FOR JURY TRIAL

7.1 The allegations in all preceding paragraphs are re-alleged as if fully incorporated herein.

7.2 Trial by jury is demanded by the Plaintiffs as to all of the claims triable by a jury asserted herein.

VIII. PRAYER FOR RELIEF

WHEREFORE, in view of the foregoing, **PLAINTIFFS** respectfully request and pray for judgment in their favor against **DEFENDANTS**, and that the Court enter judgment as follows:

8.1 Granting a Temporary Restraining Order demanding that Defendants:

- a. Allow Plaintiffs, their representatives and their experts in the area of art conservation-restoration, to access the mural "Río Grande de Loíza" at the Fountain Christian Bilingual School of Carolina so they can thoroughly evaluate the damages done to the mural and the current process for "rescue" or "recovery" being carried out by the Defendants; and
- b. Not take any further action to "rescue", "recover", alter, deface, modify, mutilate or destroy Torres Martino's mural "Río Grande de Loíza" at the Fountain Christian Bilingual School of Carolina, Puerto Rico.

8.2 Granting a preliminary and permanent injunction barring Defendants, their agents, officers, attorneys, employees, successors, licensees, and all those individuals acting in concert with them, from taking any further action to "rescue", "recover", alter, deface, modify, mutilate or destroy Torres Martino's mural "Río Grande de Loíza" at the

Fountain Christian Bilingual School of Carolina, Puerto Rico;

8.3 Declaring that Plaintiffs have the right pursuant to 17. U.S.C. § 106A(d)(2) and 31 L.P.R.A. §1401i-1401ff, et seq., Plaintiffs have the right to prevent any destruction, distortion, mutilation or modification of Torres Martino's works of visual art for a term consisting of the author's life and seventy (70) years after his death;

8.4 Ordering Defendants to pay Plaintiffs all compensatory damages as a result of the acts described herein, including any costs necessary for the proper restoration of the mural by a qualified professional in said area;

8.5 Ordering Defendants to pay Plaintiffs all statutory damages contemplated by the previously cited federal and state law;

8.6 On all claims, awarding Plaintiffs' their costs and expenses, including attorney's fees, to the full extent allowed by law, including under the Copyright Act and VARA 17 U.S.C. §§ 101, et seq.;

8.7 Ordering pre-judgment and post-judgment interest according to law in all applicable damages; and

8.8 Entering such other and further relief as the Court deems just, proper and equitable under the circumstances.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 23rd day of July, 2018.

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